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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Jean-Michel Lerdu

Serial No.: 10/033,178

Art Unit: 3679

Filed: December 28, 2001

Examiner: Jori Schiffman

For: FENCE

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

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Dear Sir:

Please amend the claims as indicated in the accompanying sheet entitled Claim
Amendments.

RESPONSE

This is in response to the Office Action of February 18, 2004. Instead of filing the Reply Brief, the examiner choose to reopen prosecution and to render the aforementioned Office Action.

Claims 1, 6, 12, and 13 now stand rejected under 35 U.S.C. Section 102(b) as being anticipated by Lauzier. As mentioned throughout the prosecution of this application, including the submitted Appeal Brief, there is a basic difference in interpretation between the applicant and the examiner concerning the claim limitations of "half parts", and "at least one of said parts having longitudinally spaced ribs." First, while the rails in Lauzier are of two piece construction, they are not "half parts" as that term is used by the applicant in the specification and claims and is generally understood in the dictionary sense. Half parts 22 and 24 are described on page 3 of the applicant's specification as being essentially mirror images of each other. This is not true for

parts 4, 10 in Lauzier. Nor are parts 4, 10 “one of two equal parts into which a thing is divisible” or “a part of a thing approximately equal to the remainder” as defined in Webster’s 3rd International Dictionary.

Secondly, Lauzier items 5 are defined as openings or perforations. Item 7 in Lauzier is called a rib. In claims 1 and 12, each adjacent pair of ribs defines the space within which a board is fitted. These ribs are longitudinally spaced, thus the space is being defined as between adjacent pairs of longitudinally spaced ribs. This does not occur in Lauzier. If the examiner considers the side of each opening 5 where a slight protrusion is shown as a “rib”, then the space between such sides is not longitudinally but rather transversely spaced.

To further distance the invention of the applicant’s claims 1 and 12 from Lauzier, these claims have been amended to indicate that the longitudinally spaced ribs carried by each of the half parts extend in the same direction. Clearly this is not seen or obvious from Lauzier no matter how one attempts to describe openings 5.

Accordingly, claims 1 and 12, and depending claims 6, and 13 are neither anticipated nor rendered obvious by Lauzier.

Claims 2-4 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor. Claim 2 in its original form and as now more clearly amended describes the ribs of each of the half parts being opposed. Thus each of the half parts carries longitudinally spaced ribs and such ribs, when the half parts are secured together, are opposed. Somehow the examiner believes that Taylor would cause one skilled in the art to extend the boards 3 of Lauzeir through both rail parts 4 and 11 and as such somehow end up with opposed ribs. First, such supposed substitution is absolutely not suggested or even desired for there is no

reason to extend boards 3 of Lauzier through bottom rail part 11 since each of the boards 3 are snap-fitted into the upper rail 4 for anchoring and securement purposes. Even if boards 3 in Lauzier were inserted through both parts 4 and 11, there is still no disclosure of opposing ribs formed by each of the half parts. As such, the suggested combination of Lauzier and Taylor is not feasible and appears to be based entirely upon an attempted application of hindsight. As such, claim 2 and depending claims 3 and 4 are not obvious over Lauzier in view of Taylor.

Claims 5, 10, and 11 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor and further in view of Grimm. Simply and basically stated, the upper and lower orientation of parts 4 and 11 in Lauzier prevent the placement of any posts between the parts. To sandwich the posts between parts 4 and 11 of Lauzier would require the rails to be orientated horizontally. The Grimm reference provides no assistance in suggesting that somehow that a vertically oriented post could be sandwiched between upper and lower rail parts. As such, claims 5 and 10, and depending claim 11 are not obvious over Lauzier, in view of Taylor and Grimm.

Claim 7-9 stands rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor and further in view of Weaver.

The arguments relating to Lauzier and the allowability of claims 1, 3, and 4 apply equally to depending claim 7. With regards to claims 8 and 9, as mentioned with regard to the arguments of allowability regarding claim 1, Lauzier does not disclose “half parts”, or longitudinally spaced ribs, with such ribs extending in the same direction. Accordingly, claims 7-9 are not rendered obvious by Lauzier in view of Taylor and Weaver.

Claims 14-17 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over

Michael in view of Lauzier. First, the arguments advanced as to the allowability of claim 12 with respect to the lack of teachings in the Lauzier reference apply equally to depending claim 14.

Lauzier does not disclose, contrary to the examiner's contentions, longitudinally transverse ribs with each adjacent pair of such longitudinally spaced ribs defining a space there between for the purpose of accommodating a board. Additionally, the amendment to claim 12 indicating that the ribs extend in the same direction is not disclosed in Lauzier.

The examiner takes the position that it would be obvious to incorporate transverse longitudinally spaced ribs in Michael's rail as disclosed in Lauzier to create more secure connection of the rail to the boards so, "they are less likely to come apart." First, the spindles 22 in Michael can not come apart since they are locked between the upper and lower rails. Thus any additional securement has no effect and would not even be considered. Secondly, bars 3 in Lauzier are secured to the upper and lower rail parts by snap-fit connections having no application in the wooden style of railing system in Michael. As such, the shape of the openings 5 in Lauzier would have no applicability, are not necessary, nor even desirable in Michael. Accordingly the combination of Michael and Lauzier does not render obvious claims 14-16.

With regard to claim 17, the arguments concerning the inapplicability of Lauzier advanced with regard to claim 1 apply equally to claim 17 and the combination of the art cited by the examiner. Further, the arguments advanced as to the allowability of claims 14-16 with regard to the inapplicability of substituting any teaching shown in Lauzier into Michael also applies to claim 17. Claim 17 requires at least one of the half parts to include a plurality of longitudinally spaced transverse ribs which extend in the same direction toward the other of the half parts. Each adjacent pair of such ribs define a space into which a board is fitted. This is not disclosed in Michael as admitted by the examiner nor is it suggested in Lauzier. Lauzier, as mentioned

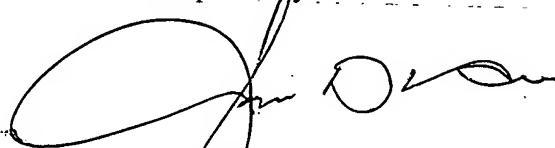


previously does not disclose ribs, let alone ribs that extend in the same direction. Nor can the openings 5 in Lauzier be feasibly incorporated into Michael which uses an entirely different method of retaining the spindles 22 than Lauzier uses in retaining by snap-fit connection its bars 3.

SUMMARY

In summary it is submitted that all claims in the above subject application as amended are in allowable form.

Respectfully submitted,


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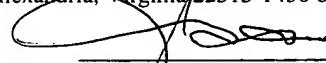
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